

OGC HAS REVIEWED.

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13-9991 A

13 December 1954

MEMORANDUM FOR: Chief, Special Security Division

SUBJECT: Outside Employment

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1. Reference is made to your memorandum of 9 November 1954 and our recent conversations concerning the compatibility of employments of those employees of this Agency who have the opportunity to assist in conducting basket ball programs two or three evenings a week at local public schools. As we have acknowledged in our conversations, you are concerned with the conflict of such employment with the provisions of the dual compensation and employment laws under 5 U.S.C. 58 and 62. Your memorandum indicates that the duties would be light and the pay would be by "evening shift." This statement has been enlarged by virtue of my conversations with your [REDACTED] and my further conversations with Mr. Isaacs of the Accounting Department of the District of Columbia Government, so that at this time it may be additionally stated that it is the policy and practice of the Recreation Board to consider such payments as payments on a "fee" basis. The Act of April 29, 1942, 56 Stat. 262, 8-209 D. C. Code, provides in pertinent part as follows:

"Upon recommendation of the Superintendent, the Board is authorized to employ, on a part-time basis, at rates of pay to be fixed by the Board without reference to the Classification Act of 1923, as amended, and without reference to Civil Service requirements, and without regard to the prohibition against double salaries provided by section 1763, Revised Statutes (U.S.C. Annotated, title 5, sec. 58), such teachers, custodial, and other employees of the United States, the District of Columbia, and the Board of Education, upon approval by the present employer, as may be necessary to keep in operation and to conduct therein appropriate phases of the recreation program authorized by this Act.

* * *

"The Superintendent is authorized to employ for a ninety-day period as full- or part-time employees, such referees, umpires,

swimming-pool guards and attendants, gymnasium and playground supervisors, and other similar special employees as may be necessary to carry out the recreation program authorized by this Act, at rates of pay to be fixed by the Board without reference to the Classification Act of 1923, as amended, and without reference to Civil Service requirements, and without regard to the prohibition against double salaries provided by section 1763, Revised Statutes (U.S.C. Annotated, title 5, sec. 58): Provided, That the retention in the District service of any such employees for a period longer than ninety days shall be subject to the approval of the Board."

2. Under the aforesaid authorities, it is not uncommon for full-time employees of the Federal Government to be utilized in the capacities indicated. Payments are made on a fixed basis and without regard to the amount of time expended in pursuit of the individual's duties, for which reason the compensation of the individual so utilized is properly denominated a "fee". In view of the foregoing and the exceptive legislation referred to above, it is the opinion of this office that there is no legal obstacle to such employment.

3. This memorandum will confirm my verbal statement to your [REDACTED] to the same effect.

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[REDACTED]

Assistant General Counsel

OGC:JBK:afb

cc: Legal, Vital
Subject, Signer
Chrono